

herein.

Labor Law § 198, and any other cause of action which can be inferred from the facts set forth as well as New York State Executive Law, Section §290 [Human Rights Law]; New York State U.S.C. § 201 et seq. ("FLSA") as amended by the Equal Pay Act ("EPA") (29 U.S.C. § 206(d)), Section 2000(e) et seq.; and for retaliation; and in violation of the Fair Labor Standards Act, 29 U.S.C. of the Civil Rights Act of 1964, as amended, and Section 1981 of the Civil Rights Act, 42 U.S.C. Discrimination in Employment Act (29 U.S.C. Sec. 621 -634), and race in violation of Title VII terms and conditions of her employment, on the basis of Plaintiff's age in violation of the Age

1. This action is brought by Plaintiff on the basis of discrimination against her in the

NATURE OF THIS ACTION

and information and belief as follows:

Plaintiff, through her attorneys, WOLF & WOLF, LLP, alleges upon personal knowledge

-----X
Defendants.
HENRY J GERARD,
JOHN D. SALDARRELLI, and
AMERICAN REAL ESTATE HOLDINGS, L.P.
AMERICAN REAL PARTNERS, L.P.
DEMANDER
JURY TRIAL
US DISTRICT COURT
CLERK'S OFFICE
JUN 28 2005

-against-

Plaintiff,

BARBARA LEVENBERG,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 05cv6012

UDGE WOLFGANG

- Partners L.P., responsible for administering the Accounting Department.
- John Saldarrelli was and is, *inter alia*, the Chief Financial Officer of American Real Estate
7. On information and belief, at all times hereinafter mentioned the individual defendant
- Kisco, New York and manage the holdings of Carl Icahn.
- Petitioner's employees doing business in the State of New York at 100 South Bedford Road, Mt.
6. On information and belief, at all time hereinafter mentioned the L.P.; defendants are
- will be more fully set forth below.
- since the filing of the SDHR complaint some of her duties have been taken away from that which
- 1/2 years. Petitioner's current title is Assistant Controller at a salary of \$69,000. However,
- Partners, L.P. and American Real Estate Holdings, L.P., having been employed for a period of 12
- and employee in good standing of the partnership entities the defendants American Real Estate
5. Plaintiff is a resident of Hartsdale, New York located in Westchester County. She is

THE PARTIES

- days of Plaintiff's receipt of her Right to Sue letter.
- Sue letter dated January 14, 2005, which is attached as Exhibit B. This action is filed within 90
- Opportunity Commission [a copy of which is attached as exhibit A, and has received a Right to
- a formal administrative complaint (Charge Number 16G200405205) with the Equal Employment
4. The jurisdictional prerequisites to this lawsuit have been completed. Plaintiff has filed
3. Venue is proper pursuant to 28 U.S.C. §1391.
- of supplemental jurisdiction and the aforementioned statutory and Constitutional provisions.
2. The jurisdiction of this Court is invoked under 28 U.S.C. §1331, and 1343 the doctrine

complaint with the State Division of Human Rights.

d. Retaliations: The Plaintiff has been discriminated against for filing the initial

the Federal Tax Laws.

age to contribute additional monies to her 401K pursuant to the recent "catch up" provisions to conditions that the Plaintiff. Plaintiff has also been denied the right given to individuals of her

defendants employ younger employees who are afforded advancement and better working

The Defendants have violated State and Federal Laws against age discrimination in that the of age and is a member of a protected class under Federal and State anti-discrimination laws.

c. Violations of Age Discrimination in Employment Laws: Petitioner is over forty years

individual.

work that is the same or similar to at least one male employee without equality in pay with that

b. Violation of the Equal Pay Act: As the Assistant Comptroller, the Plaintiff performs

compensation or higher rate of increase after a short period of tenure.

defendants have failed to promote the Plaintiff hiring, instead, two male employees at a higher

schedules, overtime pay, bonuses, comp time, flextime, and choice of vacation. Moreover, the

males are given more favorable terms and conditions of employment extending from salary

Gender Discrimination in the terms and conditions of employment in that similarly situated

a. Gender Discrimination: Defendants have violated Federal and State Law against

terms and conditions of her employment as follows:

10. The Respondents, and each of them, have discriminated against the Petitioner in the

9. The Respondent partnership entities employ more than 17 individuals.

alio, the Comptroller of the LP defendants.

8. At all times hereinafter mentioned, the Defendant Henry J. Gerard was and is, inter

\$100,000.00 more than \$31,000.00 than the Plaintiff earned after 13 years.

A and C the Defendants hired a male assistant controller for the LP's at a pay rate of

16. On September 15, 2004 after the filing of the SDRH complaints annexed as Exhibits

FACTS CONSTITUTING RETALIATION AND FAILURE TO PROMOTE

surreptitious attempt to redefine her role in response to the first SDRH complaint.

15. The withdrawal and marginalization of Plaintiff's job duties also constituted a

marginalizing her position as more particularly set forth herein.

14. The complainant alleges that the Petitioner had been stripped of job duties thus

is annexed as Exhibit C.]

Plaintiff filed a further complaint for retaliation and hostile work environment [a copy of which

13. After the filing of the aforementioned SDRH complaint, to wit, in April, 2004, the

FACTS CONSTITUTING RETALIATION

disabled.

elsewhere as a result of the aforesaid treatment and has been rendered sick, sore, lame and

12. Plaintiff has endured pain, suffering, and humiliation at her place of employment and

favorably compensated for the same or similar work.

at least two years prior thereto male employees doing the same or similar work were more

11. On information and belief, eleven days before signing the SDRH complaint, and for

maintained a hostile work environment.

maintained and fostered a hostile work environment. Consequently, the Defendants have

continuing. Based upon the frequency and severity of this conduct, Defendants have created,

e. Hostile Work Environment: All of the above conduct is severe and pervasive and is

23. As a proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and

Plaintiff that Plaintiff was less competent than others in the department treatment, with the untrue implication to Plaintiff's peers, co-workers and others in contact with professional reputation and credibility by their actions, wherein subjecting Plaintiff to such performance, on the basis of her age. Defendant repeatedly tarnished Plaintiff's personal and Employee Act by denying her similar privileges of employment, inconsistent with her work

22. Defendant discriminated against Plaintiff in violation of the Age Discrimination in

from discriminating in employment decisions on the basis of age.

Age Discrimination in Employment Act (29 U.S.C.A., section 621), and as such was prohibited

21. At all times material hereto, Defendant was an employer within the meaning of the

group of workers over the age of 40.

employment on the basis of age, in that Plaintiff was a member of the protected and recognized

Discrimination in Employment Act (29 U.S.C.A. Section 621), prohibiting discrimination in

20. Plaintiff was at all times material hereto an employee covered by the Age

through 18.

19. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1.

AGAINST THE LP DEFENDANTS FOR AGE DISCRIMINATION AS AND FOR A FIRST CAUSE OF ACTION

18. The Petitioner was not offered the position although she was qualified therefore.

younger than the Complainant.

responsibilities that are now assigned to him were offered to a male Assistant Controller who is

17. Prior to the employment of the new male Assistant Controller, the duties and

SDHR complain.

29. The disparity in pay afforded was not discovered until shortly before the filing of the employees in the same establishment for work that requires substantially equal skill, effort, and responsibility and is performed under similar working conditions.
28. Upon information and belief, from 2001 and continuing into the present, Defendants have failed and is failing to pay Plaintiff at the same rate it has been and is paying male same force and effect as if herein more fully set forth.

27. Repeats and realleges each and every allegation set forth in paragraphs I-24 with the

UNDERR THE EQUAL PAY ACT AGAINST THE LP DEFENDANTS
AS AND FOR A THIRD CAUSE OF ACTION

seq.

- discrimination against Plaintiff on the basis of her gender, in violation of 42 U.S.C. § 2000e et seq. Defendants acts, practices, and policies described herein constitute intentional discrimination against Plaintiff on the basis of her gender, in violation of 42 U.S.C. § 2000e et seq.
26. Defendants conduct was willful, entitling Plaintiff to liquidated damages.
- same force and effect as if herein more fully set forth.

25. Repeats and realleges each and every allegation set forth in paragraphs I-24 with the

FOR GENDER DISCRIMINATION AGAINST THE
AS AND FOR A SECOND CAUSE OF ACTION
LP DEFENDANTS.

- Plaintiffs rights. In addition, the conduct was willful, entitling Plaintiff to liquidated damages.
- motive amounting to malice and spite caused by bias and was done in conscious disregard of malicious, fraudulent and oppressive manner intended to injure Plaintiff, was with an improper consequences, all to Plaintiffs damage in an amount according to proof.
24. The conduct of Defendant was outrageous, was done in a deliberate, callous,

consequential damages and expenses, all to Plaintiffs damage in an amount according to proof.

fully set forth herein.

37. Plaintiff repeats and realleges the allegations set forth in all previous allegations as if

NEW YORK LABOR LAW § 198 AGAINST THE LP DEFENDANTS
SIXTH CAUSE OF ACTION

Executive Law to the extent allowed under the applicable sections.

constituted illegal retaliation under Title VII, Federal Age Discrimination Statutes, and the State

36. All of the conduct that occurred after filing the first SDHR Complaint [Exhibit A]

with the same force and effect as if herein more fully set forth

35. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-33

AGAINST THE LP DEFENDANTS FOR RETALIATION
AS AND FOR A FIFTH CAUSE OF ACTION

State Executive Law § 290

34. The conduct aforesaid constitutes discrimination and retaliation under New York

with the same force and effect as if herein more fully set forth.

33. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-32

DISCRIMINATION UNDER THE NEW YORK STATE EXECUTIVE LAW
AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST THE LP DEFENDANTS

206(d)] is willful.

32. Defendants, violation of Section 6(d) of the Equal Pay Act ("EPA") [29 U.S.C. §

Act ("EPA") [29 U.S.C. § 206(d)].

31. By virtue of the foregoing, Defendants have violated Section 6(d) of the Equal Pay

\$100,000.00

30. The disparity continued in the in the 2004 hiring of an assistant controller for

EDWARD H. WOLF (EW-0656)
910 Grand Concourse, 1F
Bronx, New York 10451
(718) 410-0653
Edward H. Wolf
WOLF & WOLF LLP
Attorneys for Plaintiff

By:

Dated: Bronx, New York
June 28, 2005

- d. Such other and further relief as the Court/Jury may deem just and proper;
- c. Cost of suit and attorneys fees;
- b. Punitive damages;
- a. Compensatory damages

WHEREFORE, Plaintiff demands as follows:

and abetting the illegal acts of the LP defendants under NYSHRL.

41. By the acts alleged herein, the individual defendants are liable to plaintiff for aiding

Saldarrelli and Henry J. Gerard.

40. The conduct alleged herein was perpetrated by the individual defendant's John D.

same force and effect as if herein more fully set forth.

39. Plaintiff repeats and realleges each and every allegation in paragraphs 1-38 with the

AGAINST THE INDIVIDUAL DEFENDANTS AS AIDERS AND ABETATORS
FOR A SEVENTH CAUSE OF ACTION

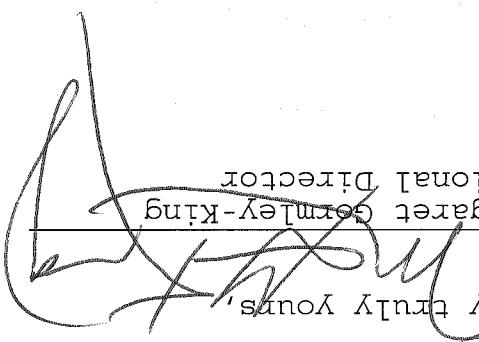
and plaintiff has been damaged.

38. As the result of the foregoing, defendant has violated New York Labor Law § 198

02/04/04

/rxc

Complaint Letter (INV.11)



Margaret Somervell King
Regional Director
Very truly yours,

Thank you for your cooperation.

To protect your rights, it is essential that the Division be advised promptly at all times of any change of address.

Please notify us immediately of any change in your address and telephone number should you move. A form is enclosed for this purpose.

Your case will be contacted by the Human Rights Specialist assigned to

Please be advised that this office has received your verified complaint and it is now part of the Division's case load. The Division, except for critical exceptions, investigates complaints chronologically by date of filing.

Dear Ms. Levenberg:

SDHR No: 3-E-AS-04-125556-A

vs.
Re: American Real Estate
Partners, L.P.; American
Real Estate Holdings,
L.P.: John D.
Saldarrelli, and Henry J.

Gerard

Barbara Levenberg
33 Holmes Avenue
Hartsdale, NY 10530

Re: Barbara Levenberg

Michelle Cheaney Donaldson
Commissioner

(914) 788-8059 Ext. FAX
(914) 788-8050
Peekskill, NY 10566
8 John Walsh Blvd. - Suite 204
DIVISION OF HUMAN RIGHTS
EXECUTIVE DEPARTMENT
STATE OF NEW YORK

Clipper

02/04/04
/xxc

Complainant Letter (INV.11)

(Date)

(Complainant's Signature)

TELEPHONE NO: ()

ADDRESS:

NAME:

Please indicate below the name, address and telephone number of a person who may be contacted if the Division cannot locate you at the address you have provided.

(Date)

I WILL BE AT MY NEW ADDRESS ON AND AFTER:

NEW ADDRESS:

BUSINESS TELEPHONE NO: ()

NEW TELEPHONE NO: ()

COMPLAINANT'S NAME: Barbara Levenberg

CASE TITLE: Barbara Levenberg vs. American Real Estate Partners, L.P.; American Real Estate Holdings, L.P.; John D. Saldarelli, and Henry J. Gerard

SADR NO: 3-E-AS-04-1255556-A

PLEASE PRINT

THIS FORM TO THE REGIONAL OFFICE IF YOU MOVE.
DO NOT JEOPARDIZE YOUR RIGHTS. COMPLETE AND RETURN
NEW YORK STATE DIVISION OF HUMAN RIGHTS

02/04/04
/xxc

Complaint: Title VII/ADEA (INT.10) (1 of 2)

(See attached complaint received from the complainant's attorney,
Edward H. Wolf.)

The particulars are:

Date most recent or continuing discrimination took place 12/19/03.

State of New York (Human Rights Law) because of Age and Sex.
Employment in violation of Article 15 of the Executive Law to the
10549 with an unlawful discriminatory practice relating to
respondent whose address is 100 South Bedford Road Mount Kisco, NY
10530, Tel. No. (914) 288-8056H, (914) - charge the above-named
I, Barbara Levenberg, residing at 33 Holmes Avenue, Hastingsdale, NY

TITLE VII/ADEA: Federal Charge No: 16GA05160

(State Division of Human Rights on the Complaint of)	
Barbara Levenberg	
COMPLAINT	
- Plaintiff -	
RESPONDENT	American Real Estate Partners, L.P.;
John D. Saladerelli, and Henry J. Gerald	

STATE DIVISION OF HUMAN RIGHTS
SDHR NO:
EXEC. LAW ART. 15
3-E-AS-04-1255556-A

Mt. Kisco, New York, 10549.

are Petitioners employees doing business in the State of New York at 100 South Bedford Road,

2. On information and belief, at all times hereinafter mentioned the, L.P., Respondents

years. Petitioner currently functions as Assistant Controller at a salary of \$69,000.00
good standing with the above partnership entities having been employed for a period of 12 ½
female, residing at 33 Holmes Avenue, Hartsdale, New York, 10530, and is an employee in
1. At all times hereinafter mentioned the Petitioner, Barbara Levenberg, a 54 year old

Human Rights alleges and states as follows:

BARBARA LEVENBERG, as and for administrative complaint to the State Division of

EFOC# 166-AS-05160
-----X-----

Respondents.

JOHN D. SALLARIELLI, HENRY J. GERRARD,

hereinafter referred to as the "LP" respondents, and
(a subsidiary of Respondent American Real Estate
Partners, L.P.)
AMERICAN REAL ESTATE HOLDINGS, L.P.
AMERICAN REAL ESTATE PARTNERS, L.P.

-against-

Petitioner,

BARBARA LEVENBERG,

X

STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

VERIFIED COMPLAINT

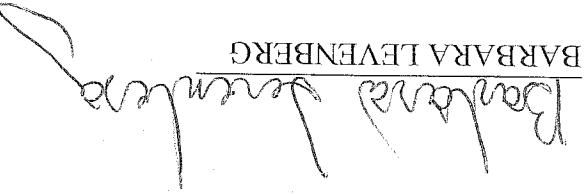
SAC#

3-E-AS-04-1385576-a

- of age and is a member of a protected class under Federal and State anti-discrimination laws.
- c. Violations of Age Discrimination in Employment Laws. Petitioner is over forty years work that is the same or similar to at least one male employee without equality in pay with that individual.
- b. Violations of Equal Pay Act. As the Assistant Comptroller, the Petitioner performs overtime pay, bonuses, comp time, flexibility [flextime] and choice of vacation favorable terms and conditions of employment extending from remuneration [salary schedules, gender discrimination in the terms and conditions of employment in that Males are given more a. Gender Discrimination: Respondents have violated Federal and State Law against terms and conditions of her employment as follows:

6. The Respondents, and each of them, have discriminated against the Petitioner in the terms and conditions of her employment as follows:
5. The Respondent partnership entities employ more than 17 individuals.
- alia, is the vice president and controller of the L.P. respondents, and Petitioner's immediate supervisor [hereinafter referred to as an aider and abettor.]
4. At all times hereinafter mentioned the Respondent, Henry J. Gerard was and is, inter as an aider and abettor.]

- Estate Partners L.P., responsible for administering the L.P. respondents, [hereinafter referred to Respondent John Saldarrelli was and is, *inter alia*, the Chief Financial Officer of American Real Estate Information and belief, at all times hereinafter mentioned the individual

BARBARA LEVINEBERG


December 31, 2003

Dated: Bronx, New York

With whatever equitable relief that seems just and necessary in the premises,
the Respondents be compelled to pay the Petitioner front pay, back pay, attorney's fees, together

WHEREFORE, it is respectfully requested that a finding of "probable cause" issue, and

sick, sore, lame and disabled.

9. The Petitioner has been unjustly and illegally treated all of which has rendered her

on behalf of the Partnership entities.

to the partnership entities in that they have caused the conditions aforesaid to exist and continue

8. In addition to the foregoing, the individual respondents have been aiders and abettors

similar work.

individuals doing the same or similar work were more favorably compensated for the same or

employment was December 19th, 2003 relating to disparity in bonuses and salaries in that

7. The most recent act of discrimination relating to the terms and conditions of her

to the federal tax laws.

her age to contribute additional monies to her 401K pursuant to the recent "catch up" provisions

conditions than the Petitioner. Petitioner has also been denied the right given to individuals of

respondents employ younger employees who are afforded advancement and better working

The Respondents have violated State and Federal laws against age discrimination in that the